



## SECTION IV: STUDENTS

## POLICY 4070

### DISCIPLINARY REMOVAL OF CHILDREN WITH DISABILITIES

#### Definitions

For purposes of this Policy, the following definitions apply:

1. *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act, 21 U.S.C. § 812(c).
2. *Illegal drug* means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.
3. *Serious bodily injury* means bodily injury that involves:
  - a substantial risk of death;
  - extreme physical pain;
  - protracted and obvious disfigurement; or
  - protracted loss or impairment of the function of a bodily member, organ or mental faculty.
4. *Weapon* means a dangerous weapon as defined by 18 U.S.C. § 930(g)(2), specifically, a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.
5. *School day* means any day, including a partial day, that children are in attendance at school for instructional purposes.

#### Case-By-Case Determination

District personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates the District's code of student conduct.

#### Short-Term Disciplinary Removal

District personnel may remove a child with a disability who violates the District's code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting or suspension, for not more than ten (10) consecutive school days and for additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct, as long as those additional removals do not constitute a change of placement.

A change of placement occurs if:

1. The removal is for more than ten (10) consecutive school days; or
2. The child has been subjected to a series of removals that constitute a pattern.

Under the Individuals with Disabilities Education Act and its implementing regulations, school personnel determine whether a pattern exists by considering the following factors:

1. The series of removals total more than ten (10) school days in a school year;
2. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
3. Such additional factors as the length of each removal, the total amount of time the child has been removed and the proximity of the removals to one another.



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#### Educational Services During a Short-Term Disciplinary Removal

The District will provide a child with a disability the same level of services it provides children without disabilities during removals for ten (10) school days or less during the school year.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if a subsequent removal is imposed for not more than ten (10) consecutive school days and is not a change of placement, District personnel, in consultation with at least one (1) of the child's teachers, will determine the extent to which services are needed, so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP or Section 504 Plan.

#### Notification

On the date on which the decision is made to make a disciplinary removal that constitutes a change of placement of a child with a disability because of a violation of the District's code of student conduct, District personnel will notify the child's parents of the decision and provide the parents of children who are eligible for special education and related services under the IDEA with a copy of the District's *Parents Rights in Special Education: Notice of Procedural Safeguards* form. District personnel will provide the parents of children who are eligible for special education and related services only under Section 504/Title II with a copy of the District *Section 504 Information and Procedural Safeguards* form.

#### Special Circumstances

District personnel may also remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries or possesses a weapon at school, on school premises, or to or at a school function;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school, on school premises or at a school function; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function.

#### Making a Manifestation Determination

Except for removals that will be for not more than ten (10) consecutive school days and will not constitute a change of placement, within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of the District's code of student conduct, the child's IEP or 504 team will meet to review all relevant information in the student's file, including the child's IEP or 504 Plan, any teacher observations and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the District's failure to implement the IEP or 504 Plan.



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The conduct will be determined to be a manifestation of the child's disability if the child's IEP or 504 team determines that a condition in either (a) or (b) of this paragraph was met.

If the child's IEP or 504 team determine that the conduct in question was the direct result of the District's failure to implement the IEP or 504 Plan, the District will take immediate steps to remedy those deficiencies.

#### **Determination that Behavior Is a Manifestation of the Child's Disability**

If the IEP or 504 team determines that the conduct was a manifestation of the child's disability, the IEP team will either:

1. Conduct a functional behavioral assessment, unless the District had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and further functional behavior assessment is deemed unnecessary, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior.

Except as provided in section 6 of this Policy, the IEP or 504 team will return the child to the placement from which the child was removed, unless the parent and the District agree to a change of placement as part of the modification of the behavioral intervention plan.

#### **Determination that Behavior is not a Manifestation of the Child's Disability**

If the behavior that gave rise to the violation of the District's code of student conduct is determined not to be a manifestation of the child's disability, then District personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

#### **Educational Services During a Long-Term Disciplinary Removal**

During a long-term disciplinary removal, a child eligible for special education and related services under the IDEA will:

1. Continue to receive educational services so as to enable the child to continue to appropriately progress in the general education curriculum, although in another setting, and to appropriately advance toward achieving the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

The child's IEP team will determine appropriate services and the location in which the services will be provided. These services may be provided in an interim alternative educational setting determined by the IEP team.

During a long-term disciplinary removal, a child eligible for special education and related services only under Section 504/Title II will receive educational services to the same extent that a child without disabilities would receive educational services during a disciplinary removal for the same offense.



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#### Appeal to Hearing Officer Under the IDEA

The parent of a child eligible for special education and related services under the IDEA who disagrees with any decision regarding placement or the manifestation determination under this Policy, or the District, if District personnel believe that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by filing a due process hearing complaint seeking an expedited hearing.

In making the determination, the hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the applicable provisions of the IDEA or that the child's behavior was a manifestation of the child's disability; or
2. Order a change of placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These procedures may be repeated, if the District believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

When an appeal has been requested by either the parent or the District, the child will remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period set for the placement, whichever occurs first, unless the parent and the District agree otherwise.

The District may also seek a court order to remove a child with a disability from school or change the child's current educational placement if District personnel believe that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

#### Providing Records to Disciplinary Decision Maker

If the District initiates disciplinary procedures that would constitute a change of placement for a child with a disability, District personnel will ensure that the child's special education and disciplinary records are provided for consideration to the school personnel making the final determination regarding the disciplinary action.

Source: *Broken Arrow Board of Education Policy Adoption, July 13, 2009.*